Affirmed by P.C. (1955) July 5. M.L.T. 148

COMPTROLLER OF INCOME TAX v. PL. RM. FAMILY & P. V. FAMILY.

[C. A. (Mathew, C.J., Murray-Aynsley, C.J. (S.), and Taylor, J.) July 2, 1953]

[K.L. — F.M. Civil Appeals Nos. 10 & 11 of 1953]

Income Tax Ordinance, 1947, ss. 14(1)(d) and 33(2)(b) — Revaluation claims under Debtor and Creditor (Occupation Period) Ordinance, 1948 — Irrecoverable amounts not deductible from profits of later years.

These appeals are concerned with income tax for the year 1951 assessed on trading results for the year 1950, and raise the question of the proper method of dealing with loans made before the Japanese occupation part of which proved to be irrecoverable. The taxpayer in each case is an undivided Hindu family carrying on business as a money lending firm. Certain loans were made before the occupation period. During the occupation period they were paid off. By the Debtor and Creditor (Occupation Period) Ordinance, 1948, the respondents became entitled to certain sums on these debts. This Ordinance came into force in 1949. The respondents were, apparently owing to the fact that after the death of the agent one Andiappa which took place before the coming into force of the Ordinance, unable to recover the whole of the face value of the revalued debts. They settled in the course of the year 1950 for various sums and they claim to set off the balance against their trading profits of the year 1950 in fixing their assessable income for that year.

Held: where the amounts claimed on revaluation under the Debtor and Creditor (Occupation Period) Ordinance, 1948, are recovered in part only, the balances written off are losses and are not deductible from profits of later years assessed for income.

Cases referred to:—

(1) *Reid's Brewery Co. v. Hale* (1891) 2 Q.B. 1.

(2) *Gleaner Co. v. Assessment Committee* (1922) 2 A.C. 169.

(3) *John Dickenson & Co. Ltd. v. Bristow* (1946) 1 All E.R. 148.

COURT OF APPEAL.

D. B. W. Good (Ag. Solicitor-General) for the appellant.

N. A. Majoribanks (*M. N. Cumarasami* with him) for the respondents.

Cur. Adv. Vult.

Mathew, C.J. : — The taxpayer is a money lending firm which, prior to the occupation of Malaya by the Japanese, had lent out money on the security of land. During the occupation, these loans were paid off and the securities concerned released. On the 1st of October, 1949, the Debtor and Creditor (Occupation Period) Ordinance, 1948, came into force, under which creditors were enabled, subject to certain conditions, to have their securities reinstated and to claim the difference between the face value and the real value of the occupation re-payments which had been made in occupation currency which steadily, and at the end of the occupation rapidly, decreased in real value.

The respondents in this appeal had claims amounting to a total of about $600,000 when the Debtor and Creditor (Occupation Period) Ordinance came into force. The fact that their manager during the occupation period had died decreased the likelihood of their being able to prosecute their claims to a successful conclusion. The respondents resorted to negotiation and recovered in all $306,000 during the year 1950.

The respondents, when completing their return of income for 1950, claimed to deduct the amount of $345,000 which they had written off in their books as either a bad debt or a trading loss. The Comptroller of Income Tax disallowed this deduction. On appeal to the Board of Review the respondents were unsucessful, but on appeal from them to the High Court they were successful in part, the learned trial judge ordering the Comptroller of Income Tax to re-assess the taxpayer on the footing that he is entitled to an allowance for principle monies lost in consequence of the facts which have arisen, but not to an allowance for interest similarly lost. It is against this decision that the Comptroller of Income Tax is now appealing.

In my view, the appeal in the High Court was argued on a wrong view of the facts, and some confusion was caused by the Solicitor-General conceding that the loss of $345,000 took place in 1950. In October, 1949, the respondents found, as a result of the coming into force of the Debtor and Creditor (Occupation Period) Ordinance, that they were enabled to reinstate certain securities and this they did. If thereafter they were 100% successful in establishing their claims under the Ordinance, they would have been in a position to recover approximately $600,000.

In December, 1949, they raised the assets side of their balance sheet and showed their sundry debtors at a figure which was based on their recovering in full their claims under the Debtor and Creditor Ordinance. In 1950 they negotiated and recovered by settlement $306,000 (approx.) of the $600,000 (approx.) that they had hoped to recover. In the balance sheet for 1950 they wrote off $345,000 (approx.) which they had failed to recover as a result of their having settled all their claims for sums less than the full amount claimed. Even assuming that their manager during the occupation period had been alive and able to give evidence, it is doubtful whether they would have been successful in all their claims, for there are a number of factors, apart from demand, which have to be considered when establishing a claim to re-valuation under the Ordinance. In my view, it is unnecessary to decide

whether the Ordinance has the effect of reviving portions of old debts or creating new debts. If the Ordinance revives an old debt, the debts with which we are concerned are covered by proviso (iii) to section 14 of the Income Tax Ordinance and cannot be deducted.

It is difficult to see how the Debtor and Creditor (Occupation Period) Ordinance creates a new debt, for it is clear that the Ordinance only provides machinery for enabling creditors in certain cases to have pre-occupation debts re-valued and to recover a sum calculated in accordance with the provisions of the Ordinance. Until judgment on a claim has been given, no debt can arise. I regard the $306,000 recovered by the respondents when they settled their claims under the special provisions of the Debtor and Creditor (Occupation Period) Ordinance as a gain which cannot for the purposes of income tax be related back to the concluded transactions which took place during the occupation.

In my view, the only question is whether the sum actually recovered is liable to tax or not, but this question we have not been asked to decide.

I would allow the appeal with costs, and order that the deposit (if any) be paid out to the appellant.

Murray-Aynsley, C.J. (S.) : — These appeals are concerned with income tax for the year 1951 assessed on trading results for the year 1950, and raise the question of the proper method of dealing with loans made before the Japanese occupation part of which proved to be irrecoverable. The facts are as follows :—

Certain loans were made before the occupation period. During the occupation period they were paid off. By the Debtor and Creditor (Occupation Period) Ordinance (No. 42 of 1948) the respondents became entitled to certain sums on these debts. This Ordinance came into force on October 1st 1949. The respondents were, apparently owing to the fact that after the death of the agent one Andiappa which took place before the coming into force of the Ordinance, unable to recover the whole of the face value of the re-valued debts. They settled in the course of the year 1950 for various sums and they claim to set off the balance against their trading profits of the year 1950 in fixing their assessable income for that year.

It was conceded that losses of this kind might be treated as income losses, as distinct from capital losses, within the ruling of *Reid's Brewery Co. v. Hale*[1]. In order to bring them into the accounts for the year 1950 they must be attributable to that year. This can be done by invoking section 14(d) of the Ordinance. But in that case they are not a permissible deduction because they were incurred before the commencement of the basis period for the first year of assessment under the Ordinance, proviso (iii). The local Ordinance differs from the Imperial Statute in that it does not expressly state that this sub-section provides the sole method of dealing with bad debts. My view of the construction of the Ordinance is that the effect of the Ordinance and the Act is the same and section 14 is the only method by which a debt incurred in one year and found to be bad in another can be treated as a trading loss for the latter year. If I am wrong on this point of construction, it is necessary to consider whether as a matter of fact the loss can be said to have occurred in the year 1950. For this we must ignore section 14(d). Section 14(d) provides an artificial but convenient method of dealing with bad debts for taxation purposes. Apart from this I think that the only method would be to value all debts at the end of each year. If they were to produce more than the valuation the difference would be a trading gain for the year. If they produced less that would be a trading loss.

For the respondents to succeed along this line of approach they would have to show that these debts were worth their face value on January 1st. I do not think that they can do this. Up to October 1st, 1949, the respondents were not entitled to recover anything. On that date they become entitled to recover something but I do not think that there is any reason to suppose that the debts were worth more than the amounts for which they were ultimately compromised. The principal reason why they were compromised was the death of the agent that had taken place many years before. Nothing as far as the record is concerned indicates that anything happened after 1st October 1949 to diminish the value of the debts. Incidentally if the contention of the respondents is correct, they should have shown the full value of the debts as part of the 1949 income.

I think that the fallacy behind the contention of the respondents is that really they have been invoking section 14(d) in order to make the loss occur in 1950, whilst they have tried to evade provisos (ii) and (iii). I think that the purpose of these provisos has been misunderstood. They are really essential to 14(d). The system adopted by section 14(d) is that a debt is treated as an income receipt for the year in which it is incurred. Thus a transaction by which a thing was bought for $100 and sold on credit for $110 would show a profit of $10 on which tax would be payable. If ultimately only $100 was recovered the trader would be entitled to write back the $10 as a loss against the income for the year in which the $10 was written off. The only reason why this is allowed is because the $10 has already paid tax. As I have said, this is quite an artificial method. I think that the Comptroller is

entitled to succeed in both cases and that the appeals should be allowed with costs.

Taylor J. : — These two Income Tax appeals turn on the same question and can be treated as one.

The facts are unusual. The taxpayer in each case is an undivided Hindu family carrying on business as a money lending firm. In and before the year 1941 they lent money to various borrowers on the security of land. During the enemy occupation the borrowers repaid these loans in Japanese currency which was progressively deteriorating in value. It was, however, then legal tender and a creditor was compelled to accept it at face value and release the security. On paper, and for accounting purposes, he had been paid in full but he had in fact incurred a substantial loss, in terms of real value, in exactly the same way as an Englishman who, having lent francs to a Frenchman in 1917, when the franc was worth 9d, was repaid with the same number of francs in 1921 when the franc was worth 2d.

Prior to the war there was no income tax in Malaya. In 1941 there was a war tax based on incomes but it was swept away by the enemy occupation. For practical purposes income tax was imposed *de novo* by Ordinance No. 48 of 1947 which, in the main, follows the English law. The earliest basis of assessment was the income for 1947; the tax assessed thereon was charged on the income for 1948, and so on in subsequent years.

On Liberation, transactions in land which had been conveyed during the occupation were prohibited for the duration of the moratorium. In 1949 the Debtor-Creditor (Occupation Period) Ordinance authorised lenders to require reinstatement of the released securities and to claim further payments representing the differences between the face value and the real value of the occupation repayments, calculated according to a statutory rate of exchange, subject to certain conditions, one of which was that the repayments had been made without demand. Unfortunately for this firm, the man who was their manager for part of the material period had died in 1945 so in many cases they could not prove the necessary facts. They had, however, their reinstated securities and during the year 1950 they were able to settle many of these claims out of court for a portion of the amount due. The aggregate of these claims exceeded $600,000 of which about $306,000 was recovered and $345,000 written off.

In their return of income for 1950 for assessment of tax payable in 1951, the firm did not bring the amount recovered into account as a trading receipt but they claimed to deduct the amount written off, either as a trading loss or as a bad debt. The Comptroller of Income Tax disallowed this deduction but did not assess the amount recovered. The amount of tax in dispute is about $70,000.

On appeal by the taxpayer against this assessment, the Board of Review regarded the amount written off as a bad debt, and held that it could not be deducted on the ground that the debts in question were incurred before 1947, which was the earliest basis period; they therefore confirmed the assessment.

On appeal to the High Court this decision was varied. The Judge held that the original advances were in the nature of capital investments and that only the interest was assessable as income. He accordingly ordered the Comptroller to examine separately each one of the many transactions in question and to re-assess the tax on the footing that so much of the amount recovered as represented part of the principal of the original loan was a repayment of capital and that so much of the amount written off as represented the remainder of the principal was a deductible loss of capital; the interest written off was to be treated as a loss of income which was not deductible. These complicated calculations have not been made, so what the result would have been is not precisely known but since the aggregate of the amounts recovered was under one-half of the amounts claimed it is obvious that the amount written off included substantial portions of the original loans. The financial effect, therefore, would have been to give the taxpayer substantial relief, though probably less than that for which he contended, and on a different ground and by a very different method of assessment. Thus, on a test case, both sides were to be in error; the Court took a third view of the law.

The Comptroller now appeals to this Court. The questions are whether, on a true construction of the Ordinance, the amount written off, or part of it, is allowable as a deduction, either as a trading loss or as a bad debt.

In my view the decision complained of is based on fallacious assumptions of fact and at least one erroneous admission. The contention of the respondents which was, in part, adopted by the Judge, is founded on the idea that the original capital of the firm is something fixed and sacrosanct but capital and income, principal and interest, are accounting terms and to some extent elastic. The respondents ought to appreciate this since money-lenders often capitalise interest. The fund to be taxed is the separate income of each successive year, ascertained according to a set of detailed rules. The general idea is that of an ordinary commercial profit and loss account but provision for depreciation, replacements and the like is controlled and it may be necessary to prepare two accounts — one to show the proprietors the position of their business

in relation to past history and future prospects and the other to show the statutory income for the year of assessment. Say for the sake of argument, that this firm started business in 1936 with a capital of two million and for five years distributed modest profits, keeping the capital unaltered; say that during the war half their assets were lost by enemy action but they continued in business with the remainder; in 1946 the nominal capital might still be two million but the real capital was only one million; as between themselves and their co-parceners it is proper for them, if they so wish, to curtail distributions and plough current profits back into the business but are they to be immune from taxation for twenty or thirty years while they gradually rebuild the lost million?

During the argument in the High Court, counsel for the Treasury admitted that the loss on settlement of the re-valuation claims occurred in 1950, the year when it was written off, but this is not correct. It is true that it was only then that the exact amount was finally ascertained but that is another matter. It is not a question of mixed law and fact. There are two separate questions. First a question of pure fact: — When did the loss occur? secondly a question on the statute: — 'Is the amount written off in 1950 allowable as a deduction in the taxation account for that year?" The transaction was compared to a loss of physical goods but, with respect, the analogy was drawn at the wrong stage. Cargo is lost when the ship sinks — not when the underwriters dispute the policy or when the Court holds them partly liable or when they go into liquidation and certainly not when the Official Receiver pays a final dividend on the claim. When goods are destroyed the correct way to account for them is to write them off forthwith as a proved total loss; if they are insured and liability under the policy is admitted, a contra entry may be made of the amount expected to be recovered, which is often less than the full amount of the loss; the difference between the actual loss and the estimated recovery is the loss for that year. This estimate may be revised, upwards or downwards, if necessary in a subsequent year, and the balance of the profit and loss account will fluctuate accordingly until the transaction is finally closed but in any event no loss can be incurred in a year in which the only thing that happens is a receipt of cash. No loss occurred in 1950. The question was whether an amount written off as a loss could be deducted from the taxable income.

The Judge also held that on the coming into force of the Debtor-Creditor Ordinance the firm became absolutely entitled to recover the full amount of their differences. This seems exaggerated. They did not become absolutedly entitled; they became conditionally entitled, subject to proof of the necessary facts. In no circumstances could they have been justified in writing back the full amount as a recoverable asset. We have had hundreds of re-valuation claims and though they conform to a general pattern no two are identical. Demand is not the only factor; in some cases the security was much reduced by destruction of trees and the like and there are many other circumstanes which led to settlement of such claims for reduced amounts. Even if the manager had survived it is highly unlikely that he could have proved the facts in every case. Quite apart from his death, it was imprudent to write back the whole amount theoretically recoverable on re-valuation; over a large number of claims no more than 75% or 80%, net, could fairly have been expected. Moreover, the manager had died before the Debtor-Creditor legislation was even drafted. I agree that the respondents could not be expected to appreciate accurately the practical effect of the Ordinance immediately on its passing but that was a reason for caution. When they wrote back the amount due on re-valuation at face value they inflated their assets, first by ignoring the general factors, and secondly by ignoring the particular factor that in their case part of the necessary evidence was already lost. I do not mean that they had any intention to deceive but the so-called loss which eventually had to be written off was not a real loss. It was not the loss of anything which they had ever actually possessed or had sound reasons to expect. The writing off was the correction of a gross over-estimate. I mention this only to show that if they are entitled to deduct the loss, the deduction claim is excessively large. It does not affect the question whether the deduction is allowable. Even if they had written back the potential recoupment at 50%, there would still have been a balance of some $20,000 to be written off and the same questions of law would have arisen as to that amount.

The gist of the case is that the respondents deferred writing off their occupation currency loss until 1950 and claim to deduct the whole of it from their profits for that year, without setting off the amount recovered on re-valuation. It is at least possible that in strict law the Comptroller could have insisted on bringing the amount recovered into account and, in effect, taxing it but he has waived his right, if any, and we are not asked to consider that point.

In my opinion the case resolves itself into one short, but not simple, issue. Before and since the war the Malayan dollar was linked to sterling but during the occupation it was temporarily replaced by a "banana dollar" (an allusion to the graceful fronds in the design of the notes which was not effectively linked, even to the yen. Before the war the firm

granted a number of sterling loans; during the occupation these were extinguished by repayment in nominal dollars of small value, whereby the firm made profits on paper while sustaining losses in reality. After Liberation, they recouped these losses on paper, by debiting the borrowers with the full amount of possibly recoverable differences. In 1950 they recouped nearly half of these losses, in fact, by prudent settlements of these differences for agreed sums in sterling. They then adjusted their accounts by writing off the difference between the anticipated and the realised recoupment. This necessarily involved an accounting loss in 1950 but in truth it was the writing off in that year of the irrecoupable portion of a loss which was actually incurred before 1946. The third proviso to section 33(2)(b) of the Ordinance forbids deduction from assessable income in respect of a loss incurred before 1947. On this view of the case the appeal must succeed.

There are, however, two other possible views The amount of an outstanding loan may be regarded as a debt and the statute makes separate provision for bad debts. The High Court made a refinement by splitting each advance into elements of capital and income, corresponding to the principal and interest of the loan, and treated the principal written off as a deductible capital loss but the interest, separately, as a debt which though bad, was not deductible in this instance. I do not think the severance can be supported. It amounts to treating each individual advance by a money-lender as a specific capital investment which, in the aggregate, would leave him no ordinary business. In my view the amount owed by each borrower in an ordinary money-lending transaction, though partly principal and partly interest, is an integral debt which, at any given moment, is good, doubtful or bad, according to the security and other circumstances. The sums here in question were never "bad debts" in the ordinary meaning of the term. On the contrary, most of them were at all material times fully secured. The death of the manager occasioned a loss of evidence. The situation was comparable to that where a money-lender has lost his promissory note and therefore cannot prove the amount due, though he still holds the title deeds to show that something is due; he has a bad credit rather than a bad debt. No case similar in this respect has been cited and there may be a question whether a debt which, though fully secured, has become partially irrecoverable for lack of evidence of the amount, ranks as a "bad debt" for this purpose. Perhaps it should in a normal case but these were not ordinary money-lending transactions. The original debts were paid in full and the amounts now in question were subsequent liabilities imposed by operation of law. They were found to be in part "bad" and that part was written off but not everything which fails to be written off is a bad debt. The Income Tax Ordinance does not assist in deciding what classes of transaction give rise to "debts". It is therefore necessary to consider what the true effect of the Debtor-Creditor Ordinance was. During the argument before us, it was suggested that that Ordinance might be regarded either as reviving a portion of the original debt or as creating a new debt. Of the two, the former is preferable but it is a loose expression. It would be more accurate to say that the Ordinance authorised the creditor to claim that a portion of the original debt was revived. A claim is distinguishable from a debt. There was a case in Penang where the creditor had not actually demanded payment during the occupation but he had appointed a receiver of the mortgaged property. The Court of Appeal held that this was a constructive demand and disallowed his claim with costs, whereupon his supposed asset was converted into an actual liability. In my opinion a mere right to make a claim, subject to all the hazards of litigation, does not crystallise into a debt until the amount payable has been agreed or decided.

Assuming however, contrary to my view, that a re-valuation claim does rank for Income Tax purposes as a debt, it is necessary to consider when it was incurred. If the Debtor-Creditor Ordinance revived portions of the original debts, those debts were incurred many years ago, before the first basis year and the assessment was correct. If, on the other hand, the Ordinance created new debts they were incurred in 1949 and the amount written back on re-valuation should have been brought into the taxation account for that year; the amount written off in 1950 would then have been deductible. On that basis the respondents would be entitled to relief on the difference, which is about $40,000.

Of the cases cited only two are close enough in their facts to need mention at this stage. In *Gleaner Co. v. Assessment Committee*[2] it was held that a debt contracted prior to the first application of the corresponding statute of Jamaica, and written off later, could not be deducted. That statute is not available here but the Privy Council expressly state that it contained no relevant provisions other than those mentioned in the report which are clearly different from those of our Ordinance. I am therefore of opinion that that decision does not apply but in any event it does not help the respondents.

In *John Dickenson & Co. Ltd. v. Bristow*[3] the question arose at a different phase. The Court of Appeal held, not that a sum written off was deductible

but that a sum recovered was taxable. The reasoning, however, is instructive and I think my view is consistent with it.

I have considered it necessary to state my opinion at some length because there must be scores of money-lenders who have written off portions of their re-valuation claims during the last year or two, so this case may be temporarily of some local importance and a brief judgment in a successful appeal is liable to make difficulties for those who have to deal with similar, though not identical, cases. Also, my great respect for the learned Judge with whom, on this occasion, I am unable to agree constrains me to state as clearly as I can the reasons for taking a different view.

I think that this appeal should be allowed and the assessment restored with costs, here and below.

Appeal allowed.

Re J. L. P. HARRIS, AN ADVOCATE & SOLICITOR.

[O. C. J. (Murray-Aynsley, C.J., Brown and Buttrose, JJ.) June 22, 1953]

[Singapore — Originating Summons No. 65 of 1953]

Advocates and Solicitors Ordinance, ss. 25 and 26D — Professional misconduct — What amounts to grossly improper conduct.

This case was concerned with the professional conduct of the respondent, an advocate and solicitor of this Court. The respondent was engaged in the defence in Police Court proceedings of a person charged with permitting another person to drive a car whilst not covered by the necessary insurance, under section 48 of the Road Traffic Ordinance. It appears that the respondent's client had permitted a serving soldier named Heyes to drive a car which did not belong to the client but which he used with the Owner's permission. The basis of the charge was that the permission of the owner did not extend to Heyes and that Heyes was not a licensed driver. Heyes was charged separately under the same section and also with other motoring offences. He was defended by an officer. The case of the respondent's client was fixed for hearing on March 20th and that of Heyes on March 21st. It appeared that the prosecution not unnaturally wanted the case of Heyes tried first. The respondent equally naturally wished to avoid this. In point of fact on the application of the officer defending, the case against Heyes was on the 21st postponed till April 4th. On March 20th when the client's case came on the prosecution asked for an adjournment because they wanted to call Heyes as a witness. The respondent opposed this application, pointing out that his client had arranged to go on leave on the day fixed for the hearing of the case of Heyes. Heyes was at this time on duty in the Federation. He had not been subpoenaed and it did not appear that any steps had been taken to secure his attendance. It appeared that the prosecution had expected they would have the adjournment asked for and in consequence did not have the other witnesses present. The Magistrate who was under the impression that a subpoena had been served on Heyes granted an adjournment but, in view of the coming departure of the client, only until March 25th. The respondent appeared to have considered this attempt by the prosecution as something underhand.

On March 25th, Heyes was brought to the Court by the respondent and left waiting in a parked motor car some distance away from the Court. When the case was called the respondent said that the case on March 20th had been adjourned because Heyes as a witness was not available. The respondent also said that even now Heyes had not been subpoenaed by the prosecution and that he was not wanted by them as a witness. But the prosecuting officer, replied that Heyes was wanted as a prosecution witness.

The Disciplinary Committee which inquired into the matter found that the respondent had been grossly guilty of improper conduct. He had deliberately arranged for Heyes to be kept out of the way of the prosecution.

Held: the respondent was guilty of grossly improper conduct and his conduct was entirely unworthy of a member of the Bar and he should be suspended from practice for three months and pay the costs of these proceedings.

ORIGINATING SUMMONS.

M. W. Maxwell for the applicants.

N. A. Mallal for the respondent.

Cur. Adv. Vult.

Murray-Aynsley, C.J. [delivering the judgment of the Court, stated the facts appearing in the 1st paragraph of the head-notes above, and continued]:— We consider that the prosecution were perfectly entitled to make the application, but they were certainly wrong in not having their witnesses available on the date fixed for trial. They should not have been surprised if the Magistrate had then and there dismissed the case. It is certain, however, that the respondent knew of the expressed intention of the prosecution to call Heyes. However undesirable it might be to call him before his own case had been disposed of, there was no reason in law why the prosecution should not call him, and if not a necessary witness he was obviously a very material one. We consider that the respondent was unjustified if he assumed that the prosecution had no genuine intention to call Heyes. Between the 20th and the 25th Heyes arrived in Singapore and appears to have been in charge of a Capt. Hoyle of the Singapore Base District. No subpoena was served on him, but Capt. Hoyle gave him informal directions as the result of telephone conversations with the police and with the respondent. Capt. Hoyle was responsible for getting Heyes to Court at the proper time and he regarded his duty as discharged by an arrangement made with the respondent over the telephone that Heyes would on the morning of the 25th visit the respondent's office and then accompany the respondent to Court.

Accordingly on the morning of the 25th Heyes arrived at the respondent's office. From there Heyes went to the neighbourhood of the Court in the respondent's car, but having arrived there he did not go to the witness room in the ordinary way, but at the